

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 2940/81 imposing a definitive anti-dumping duty on p-xylene (paraxylene) originating in Puerto Rico, the United States of America and the United States Virgin Islands

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

On 15 October 1981 the Council, by Regulation (EEC) No 2940/81 imposed a definitive anti-dumping duty on imports of p-xylene originating in Puerto Rico, the US Virgin Islands and the USA. Undertakings from six exporters were also accepted thus allowing them to be excluded from the duty.

The Commission has since received requests from three US exporters to review the duty as it applied to them.

The Commission, after consultation, re-opened the procedure and commenced its investigation. This investigation showed that the co-operating companies either had not dumped or had ceased exporting to the Community. The one exception to this was Hercules, which had technically dumped because they had borne the transport costs on a consignment made to a related company. The shipment had otherwise been made at a price which could be considered normal.

However, certain exporters representing 41% of US exports to the Community either did not co-operate in the investigation or did not make themselves known to the Commission and for these companies the Commission considered it would be a bonus for non-cooperation to determine a dumping margin below the 14.7% determined in the first investigation.

It was also established that the Community producers were still in a depressed condition and that renewed material injury was likely if the duty or the undertakings were not maintained.

It is considered to be in the Community's interest that the duty and undertakings continue to apply. The two US exporters who requested the review have offered undertakings to respect the normal value. These are considered acceptable.

Member States have been informed of these proposals in the Anti-Dumping Committee and seem to be in agreement with them.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3017/79 on protection against dumped or subsidized imports from countries not members of the European Economic Community¹, as amended by Regulation (EEC) No 1580/82², and in particular Article 12 thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee provided for under the above Regulation,

Whereas the Council, by Regulation (EEC) No 2940/81³, imposed a definitive anti-dumping duty of 14,70% on imports of p-xylene⁴ originating in Puerto Rico, the United States of America and the US Virgin Islands; whereas the rate of duty for the Sun Petroleum Products Company was 6,14% and for the Shell Chemical Company was 2.37%; whereas six exporters were excluded from the duty as they gave voluntary undertakings to increase their prices to levels which eliminated dumping;

Whereas this Regulation was subsequently amended by Regulation (EEC) No 3644/81⁵ which exempted from the duty a further company which had voluntarily undertaken to respect the normal value established during the investigation period;

¹ OJ No L 339, 31.12.1979, p. 1.

² OJ No L 178, 22.06.1982, p. 9.

³ OJ No L 295, 15.10.1981, p. 1.

⁴ CCT subheading ex 29.01 D I b; Nimece Code 29.01-67

⁵ OJ No L 364, 19.12.1981, p. 3.

Whereas the Commission has since received requests from three United States companies to review the duties insofar as they apply to them;

Whereas, since the said requests provided sufficient evidence to justify a review of the proceeding the Commission announced by a notice published in the Official Journal of the European Communities(1) a review of the definitive anti-dumping duty on imports of p-xylene originating in Puerto Rico, the United States of America and the US Virgin Islands and commenced an investigation of the matter at Community level;

Whereas the Commission officially so advised the exporters and importers known by it to be concerned as well as the representatives of the exporting country and the complainants;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to be heard;

Whereas certain of the exporters known to be concerned and some importers took this opportunity to present written and oral observations; whereas, however, several traders and dealers failed to respond to the Commission's invitation to make known their views;

Whereas the Commission sought and verified all information it deemed to be necessary for the purposes of the review procedure and carried out investigations at the premises of the following:

EEC producers: ICI, Wilton
Total Chimie, Paris
Veba Öl, Gelsenkirchen
Shell Chemical, London

exporters: Arco Chemical Co., Philadelphia, Pennsylvania
Exxon Chemical Co., Darien, Connecticut
Hercofina, Wilmington, North Carolina
Koch Chemical Co., Wichita, Kansas
Phillips Petroleum Chemicals, Overijse on behalf of International Petroleum Sales Inc., Panama and Phillips Paraxylene Inc., Puerto Rico
Sun Refining and Marketing Co and Sunoco Overseas Inc. Philadelphia, Pennsylvania
Tenneco Oil, Houston, Texas

(1) OJ No C 124, 15.5.1982, p. 3.

The Amoco Chemicals Corporation and Pecten Chemicals Inc., a subsidiary of Shell Oil Company, also made information available at the Commission's offices in Brussels;

Whereas the Commission selected the last quarter of 1981 and the first three quarters of 1982 as the relevant investigation period.

Whereas normal values were established by taking the weighted average quarterly prices of the respective domestic sales of the companies concerned; whereas these weighted average prices fluctuated by quarter and had generally declined in the third quarter of 1982 to levels slightly below those established during the previous investigation;

Whereas in establishing the profitability of the domestic sales, evidence was submitted which satisfied the Commission that sales generally had not been at a loss;

Whereas export prices were determined on the basis of the prices actually paid or payable for the products exported to the Community during the period of investigation;

Whereas in comparing normal value with export prices the Commission took account where appropriate of differences affecting price comparability such as differences in transport, handling, loading and ancillary costs; whereas all comparisons were made at FOB level;

Whereas the above examination of the facts showed that these companies which had given undertakings after the original investigation had respected the terms of their undertakings and had not exported to the Community at prices lower than the normal values on their domestic markets and therefore had not resumed dumping; whereas the Shell Chemical Company had not exported during the investigation period; whereas the three companies which had requested the review, i.e. Hercofina, the Koch Chemical Company and Sun Refining and Marketing Co., which had not exported during the original investigation, had not dumped in the Community in the period covered by the review with the exception of one de minimis shipment made by Hercofina;

Whereas for those exporters who neither replied to the Commission's questionnaire nor made themselves known otherwise in the course of the review investigation, and who are estimated to account for 41% of the exports concerned, the Commission considered that it would constitute a bonus for non-cooperation to assume that the dumping margin for these exporters was any lower than the dumping margin of 14.7% determined with regard to them following the original investigation;

Whereas as regards injury the Commission has received no new evidence to alter its view that the continued application of the existing duty and the maintenance of price undertakings were requirements for the elimination of injury and the prevention of its recurrence; whereas the volatile price movements in recent quarters and the continuing depressed state of both US and EEC markets suggest that any removal of the existing definitive duty or withdrawal of undertakings might lead the exporters concerned to export surplus inventory to the EEC thereby increasing the threat of material injury to the Community industry;

Whereas no interested party in the Community has argued that the continuation of protective measures would be against the Community interest; whereas, in view of the particularly serious difficulties facing the Community industry the Commission has come to the conclusion that it is in the Community's interests that definitive measures and price undertakings be continued particularly in view of the fact that those exporters who co-operated in the Commission's investigation and who subsequently offered price undertakings only account for 59% of US exports to the Community;

Whereas accordingly the facts as finally established show that the interests of the Community call for the maintenance of the existing definitive anti-dumping duty on p-xylene originating in Puerto Rico, the USA and the US Virgin Islands;

Whereas the exporters concerned were informed of the main findings of the review and commented on them; whereas those companies which had offered undertakings in the original proceeding volunteered to renew them; whereas the Koch Chemical Company and Hercofina also voluntarily undertook to respect a minimum price for their exports;

Whereas the effect of the said undertakings will be to maintain import prices at the level necessary to prevent injury;

Whereas the Council has, therefore, determined that imports of p-xylene exported by Amoco Chemicals Corporation, Arco Chemical Co., Exxon Chemical Co., Hercofina, Koch Chemical Co., Phillips Paraxylene Inc., International Petroleum Sales Inc., Sunoco Overseas Inc. and Tenneco Oil should be excluded from the application of the duty;

Whereas the Sun Refining and Marketing Company, successor to the Sun Petroleum Products Company, declined to offer voluntary undertakings to respect minimum prices on its exports and there is therefore no reason for these companies to be excluded from the general application of the duty;

Whereas the Shell Chemical Company is no longer producing p-xylene and reference to that company in the duty should therefore be deleted,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) and (3) of Regulation (EEC) No 2940/81 are hereby replaced by the following:

"2. The duty shall not apply to p-xylene exported by:

Amoco Chemicals Corporation
Arco Chemical Company
Exxon Chemical International Supply SA
Hercofina
Koch Chemical Co.
Phillips Paraxylene Inc. and International Petroleum Sales Inc., Panama,
members of the Phillips Petroleum Group
Sunoco Overseas Inc. and Sun International Inc.

Tenneco Oil Company

3. The rate of the duty shall be 14,70% on the basis of the customs value determined in accordance with the provisions in force with regard to customs duties."

Article 2

The Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council